

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Victor Alan Ross,

Plaintiff,

v.

Internal Revenue Service,

Defendant.

ORDER

Civil No. 05-2561 ADM/JSM

Victor Alan Ross, *pro se*.

LaQuita Taylor-Phillips, Esq., United States Department of Justice, Washington, D.C., on behalf of Defendant.

This matter is before the undersigned United States District Judge for consideration of Defendant Internal Revenue Service's ("IRS") Motion to Dismiss [Docket No. 2]. Plaintiff Victor Alan Ross ("Ross") filed this action on November 3, 2005, requesting that the Court stay the IRS's decision to garnish or levy his property until a collection due process hearing can be held. Ross, however, failed to properly serve the IRS under Federal Rule of Civil Procedure 4. Although Ross forwarded a waiver form and the civil cover sheet to the IRS, he did not send the IRS a copy of the summons and complaint. Even if Ross had properly served the IRS, this Court does not have jurisdiction to hear an appeal of an IRS collection determination related to federal income tax. 26 U.S.C. §§ 6320(c), 6330(d)(1). This matter must be heard by the Tax Court. Id. Moreover, it appears that Ross' request is time-barred. A collection due process hearing must be submitted within thirty days of the date of notice of the right to the hearing. 26 U.S.C. § 6330(d); Treas. Reg. § 301.6330-1(c)(2). Ross' request, however, was sent to the IRS on April

4, 2005, although he had received notice of his right to a hearing on February 21, 2005. IRS Exs. [Docket No. 3] 1, 2. Because this Court does not have jurisdiction to hear this case and because Ross' request for a collection due process hearing is time-barred, the IRS's Motion is granted.

Based on the foregoing, and all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss [Docket No. 2] is hereby **GRANTED**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: April 19, 2006.